

APPENDIX

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1973

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**No. 73-157**

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF  
POLICE, EDGAR R. BALZAC, ADMINISTRATOR  
OF THE GENERAL SERVICES ADMINISTRATION  
OF THE COMMONWEALTH OF PUERTO RICO,  
*Appellants,*

*v.*

PEARSON YACHT LEASING CO., *Appellee*

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ON-APPEAL FROM THE UNITED STATES COURT FOR THE  
DISTRICT OF PUERTO RICO

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PETITION FOR WRIT OF CERTIORARI FILED JULY 21, 1973

PROBABLE JURISDICTION NOTED OCTOBER 9, 1973



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## APPENDIX

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[8] IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

Civil No. 1018-72

PEARSON YACHT LEASING COMPANY,  
DIVISION OF GRUMMAN ALLIED INDUSTRIES INC.,  
*Plaintiff,*

vs.

LUIS TORRES MASSA, AS SUPERINTENDENT OF POLICE OF THE  
COMMONWEALTH OF PUERTO RICO, AND MANUEL  
MARTINEZ SUAREZ, AS CHIEF OF THE OFFICE OF  
TRANSPORTATION OF THE COMMONWEALTH OF PUERTO  
RICO, *Defendants.*

### Complaint

TO: THE HONORABLE COURT:

The Plaintiff, complaining of the defendants by its undersigned attorneys, does respectfully allege and pray:

1. This is an action to redress the deprivation under color of law of the Commonwealth of Puerto Rico of rights secured to the plaintiff by the FIFTH and FOURTEENTH Amendments of the Constitution of the United States of America.

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343.

3. Plaintiff is a New York Corporation engaged in the chartering and/or leasing of vessels in the United States of America including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

4. The defendant Luis Torres Massa is the Superintendent of the Police of the Commonwealth of Puerto Rico

and as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including Title 24 § 2101—The Controlled Substances Act of Puerto Rico, [9] June 23, 1971. (24 L.R.P.A. §§ 2101-2607)

5. That defendant Manuel Martinez Suarez is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

6. That pursuant to § 2512(a), (4) and (b), the defendant Luis Torres Massa was empowered to confiscate and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act."

7. Defendant Luis Torres Massa is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512 (a) (4) by process issued pursuant to Act of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

8. Pursuant to the powers conferred by 24 L.P.R.A. § 2512 (a) (4) and (b), defendant Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1—Pearson 300, Hull No. 127 with following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H & C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; Interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fabric Cushions; Carpets; Curtains; Diesel Engine;

Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Cover.

9. At the time of the seizure of the aforesaid property by the defendant Luis Torres Massa, the same was in possession of Donovan Olson and Loretta Olson pursuant to a bareboat charter with plaintiff, copy of which is annexed [10] hereto as "Exhibit A" of the complaint.

10. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722 (a), the defendant Luis Torres Massa through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his known address.

11. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries, Inc.

12. That the plaintiff herein has never been notified of the seizure in accordance with the requirements of 34 L.P.R.A. § 1722 (a).

13. Plaintiff was unaware of the action taken by defendant Luis Torres Massa until the 19th day of October 1972 when its representative in Puerto Rico attempted to recover possession of the vessel in the manner provided by paragraph seven (7) of the charter ("Exhibit A"). On October 19th, 1972, the plaintiff's representative learned of the seizure and was unable to take possession, custody or control of the vessel.

14. The property seized is being detained, upon information and belief, at a Police Marina, in Boqueron, Puerto Rico, under the physical custody and control of agents, policemen and/or employees of defendant Luis Torres Massa.

15. Pursuant to the provisions of 34 L.P.R.A. § 1722 (b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martinez Suarez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

16. Upon information and belief, defendant Manuel Martinez Suarez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. § 1722 (b) has appraised the property in question in the sum of \$19,500.00 and intends to hold the same as legal owner thereof. Plaintiff further [11] contends that the appraisal value of the property is insufficient.

17. The defendants, Luis Torres Massa and Manuel Martinez Suarez, acting jointly and in concert, intend to deprive plaintiff of its property and to appropriate the same for the use of the Police Department of the Commonwealth of Puerto Rico.

18. The defendants, Luis Torres Massa and Manuel Martinez Suarez have proceeded under color of Act Number 4 of June 23, 1971 (24 L.P.R.A. § 2512 (a), (4) and (b)), and Act Number 39 of June 4, 1960, (34 L.P.R.A. § 1722).

19. The actions of the defendants have deprived the plaintiff under color of law of rights, privileges and immunities secured by the Constitution of the United States of America in the following respects:

(a) Act Number 4 of June 23, 1971 (24 L.P.R.A. 2512(a)) and Act Number 39 of June 4, 1960 (34 L.P.R.A. § 1722)) are unconstitutional in that they do not require that notice of the seizure be given to the owner of the property so seized and thus, with respect to the plaintiff, is a denial of due process of law and of the equal protection of the laws. The plaintiff herein has been denied the right to judicially challenge the validity and constitutionality of the seizure as provided by 34 L.P.R.A. § 1722



(a) and (c) because the fifteen (15) days limitation within which to challenge the seizure following the service of the notice of seizure, has already elapsed. Since plaintiff was never notified of the seizure it could not take the necessary steps to challenge the seizure or otherwise protect its property.

(b) The seizure by the defendant Luis Torres Massa, his agents, policemen and/or employees without notification or opportunity to be heard, deprived the plaintiff of due process of law, the equal protection of the laws and its property without compensation therefor.

(c) That statutes under which the defendants have acted are contrary to the due process and the "Taking" [12] clauses of the FIFTH and FOURTEENTH Amendments of the United States Constitution in that the seizure of plaintiff's property, an innocent party to the criminal act for which the property was seized and subject to forfeiture, is penal and causes an unconstitutional deprivation of personal property without just compensation.

20. That unless the Court restrains the defendants from using the property subject to forfeiture and disposing of it in the manner alleged in this complaint, great and irreparable injury will result to plaintiff in that the same may be lost, damaged, depreciated, or otherwise destroyed.

WHEREFORE, It is respectfully prayed that this Honorable Court:

1. Enter a preliminary and permanent injunction restraining the defendants, their agents, policemen, subordinates and/or employees from taking any further action to appropriate the plaintiff's property and from pursuing any action whatsoever for the purpose of recording title to said property in the name of the Office of Transportation of the Commonwealth of Puerto Rico and/or the Department of Police of the Commonwealth of Puerto Rico.